

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARCELLA BRATCHER
6143 Chancellor Street
Philadelphia, PA 19139-3703,

Plaintiff,

vs.

AUDIT SYSTEMS INCORPORATED
3696 Ulmerton Road, Suite 200
Clearwater, FL 33762,

Defendant.

CIVIL ACTION NO.

COMPLAINT

I. INTRODUCTION

1. This is an action for damages brought by a consumer pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 (‘FDCPA ’).

2. The FDCPA prohibits collectors from engaging in deceptive and unfair practices in the collection of consumer debt.

3. Defendant is subject to strict liability for sending a collection letter which violates the provisions of the FDCPA.

II. JURISDICTION

4. Jurisdiction arises under 15 U.S.C. §1692k and 28 U.S.C. §1337.

III. PARTIES

5. Plaintiff is Marcella Bratcher, a consumer who resides in Philadelphia, Pennsylvania at the address captioned.

6. Defendant Audit Systems Incorporated is believed to be a Florida corporation with a mailing address as captioned (herein referred to as “Audit”).

7. Defendant regularly engages in the collection of consumer debts using the mails and telephone.

8. Defendant regularly attempts to collect consumer debts alleged to be due another.

9. Defendant is a “debt collector” as that term is contemplated in the FDCPA, 15 U.S.C. §1692a(6).

IV. STATEMENT OF CLAIM

10. On February 25, 2010, Defendant sent Plaintiff an initial communication with regard to the collection of a consumer debt alleged due. A copy of the February 25, 2010 letter is attached hereto as Exhibit “A”(redacted for privacy per Fed. R. Civ. Pro. 5.2).

11. 15 U.S.C. §1692g(a) provides that a debt collector must give a Notice of Validation Rights either in the initial communication or within five days of the initial communication. The Validation Notice must contain in part the following information:

[A] statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, **the debt will be assumed to be valid by the debt collector.**

15 U.S.C. §1692g(3)(emphasis added).

12. Defendant’s collection letter does not provide this language. Rather it provides:

“Unless, within thirty days after the receipt of this notice, you dispute the validity of the debt, or any portion thereof, **the debt will be assumed to be valid.**”

Ex. “A”(emphasis added).

13. Section 1692e of the FDCPA prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

15 U.S.C. §1692e and §1692e(10).

14. Defendant's statement that "the debt will be assumed to be valid" implies that someone other than the debt collector, such as a court, will presume the debt valid, which is a false and misleading representation in violation of the FDCPA.

15. Indeed, Section 1692g(c) of the FDCPA provides that "the failure of a consumer to dispute the validity of a debt under this section may not be construed by the any court as an admission of liability by the consumer."

COUNT I - FAIR DEBT COLLECTION PRACTICES ACT

16. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

17. Defendant's February 25, 2010 letter violates the FDCPA in the following ways:

- (a) by failing to provide the required validation notice required under 15 U.S.C. §1692g; and
- (b) by sending a false, deceptive, or misleading communications in violation of 15 U.S.C. §1692e and §1692e(10).

WHEREFORE, Plaintiff Marcella Bratcher demands judgment against Defendant Audit Systems Incorporated, for:

- (a) Damages;
- (b) Attorney's fees and costs;
- (c) Such other and further relief as the Court shall deem just and proper.

V. **DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully submitted:

Date: 04/22/10

/s/Andrew M. Milz (AMM8059)

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